

TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #96- 38

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

Whether picking tickets are subject to Tennessee sales and use tax.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling and a retroactive revocation of the ruling must inure to his detriment.

FACTS

[THE TAXPAYER] orders picking tickets ("tickets") to be printed from a local vendor. The vendor prints the tickets and stores them at his location until [THE TAXPAYER]

requests delivery. [THE TAXPAYER] requests delivery of the tickets to its warehouse in Tennessee and also to its other warehouses outside of Tennessee. Delivery is made by the vendor.

The ticket serves as a shipping label and packing slip. The form is perforated into four parts: two shipping labels, a packing slip, and the remainder, not shipped with the product, is the actual ticket used by [THE TAXPAYER] to gather the order.

QUESTION

Whether [THE TAXPAYER] is subject to sales and use tax for the tickets.

RULING

[THE TAXPAYER] will not be subject to sales and use tax for the tickets.

ANALYSIS

Tenn. Code Ann. § 67-6-102(24)(A) defines a “sale” as any transfer of title or possession, or both, exchange, barter, leases or rental . . . in any manner or by any means whatsoever of tangible personal property for a consideration . . .” “Use” is defined as “the exercise of any right or power over tangible personal property incident to the ownership thereof, except that it does not include the sale at retail of that property in the regular course of business.” Tenn. Code Ann. § 67-6-102(30)(A). It is the declared legislative intent that every sale or use of tangible personal property in Tennessee is subject to the sales tax unless expressly exempted. *Shoppers Guide Publishing Co. v. Woods*, 547 S.W.2d 561 (Tenn. 1977).

An exclusion from the sales tax is found in Tenn. Code Ann. 67-6-102(23)(E)(ii), which does not deem as a taxable sale the purchase of “[m]aterials, containers, **labels**, sacks, bags or bottles used for packaging tangible personal property when such property is either sold therein directly to the consumer or when such use is incidental to the sale of such property for resale” (Emph. added). Similarly, TENN. COMP. R. & REGS. 1320-5-1-.11 states that

[i]tems actually accompanying the product sold or shipped, without which the delivery of the product is impracticable on account of the character of the contents, and for which there is no separate charge, are not subject to Sales or Use Tax. These items include such things as containers, packing materials, **labels** or name plates affixed to products manufactured, and printed matter containing only directions for use.

(Emph. added).

[THE TAXPAYER] purchases the tickets to use for several purposes. The tickets are perforated, but nonetheless are a single article of tangible personal property for consideration of whether the tickets are taxable. Two portions of the tickets are labels which are excluded from sales tax. Tenn. Code Ann. § 67-6-102(23) (E)(ii). Another part is a packing slip which is included in the order sent to the customer, and is also exempt. TENN. COMP. R. & REGS. 1320-5-1-.11. Clearly, both the shipping labels and packing slip sections, without consideration of the remainder of the ticket, are within these exemptions and are not taxable.

The portion of the ticket which is not shipped with the order is used internally by [THE TAXPAYER] to gather the order. This portion of the ticket does not fit within the exemption for packing materials because it is neither a label nor shipped with the product. There is no applicable exemption from sales or use tax for tangible personal property used by the dealer as, essentially, an internal invoice. Accordingly, if this portion of the ticket were a separate article of tangible personal property, it would not be exempt from tax.

Since the ticket is one article of property whose primary purpose, based on the facts as represented, is its use as a shipping label and packing slip, the tickets are exempt from sales and use tax.

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APPROVED: Ruth E. Johnson
Commissioner

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